

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

\* \* \* \* \*

IN RE ALTRIA GROUP, INC.  
DERIVATIVE LITIGATION

\* LEAD CASE NO. 3:20-CV-00772  
\* FEBRUARY 16, 2023 11:03 A.M.  
\* FINAL SETTLEMENT APPROVAL  
\* HEARING  
\* VOLUME I OF I

\*

\*

\* Before:  
\* HONORABLE DAVID J. NOVAK  
\* UNITED STATES DISTRICT JUDGE

\* \* \* \* \* EASTERN DISTRICT OF VIRGINIA

APPEARANCES:

For the Plaintiffs:

KIP B. SHUMAN, ESQUIRE  
Shuman, Glenn & Stecker  
100 Pine Street  
Suite 1250  
San Francisco, CA 94111

PAUL M. FALABELLA, ESQUIRE  
Butler Curwood PLLC  
140 Virginia Street  
Suite 302  
Richmond, VA 23219

For the Defendants:

STEPHEN R. DIPRIMA, ESQUIRE  
JACOB MILLER, ESQUIRE  
Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, NY 10019

Court Reporter:

Melissa H. Custis, RPR  
701 East Broad Street  
Richmond, VA 23219  
(804) 916-2278

Proceedings recorded by mechanical stenography.  
Transcript produced by computer.

In re Altria Group, Inc. - 02/16/2023

1 APPEARANCES (continued):

2 For the Defendants: JARED M. GERBER, ESQUIRE  
3 Cleary Gottlieb Steen & Hamilton LLP  
4 One Liberty Plaza  
5 New York, NY 10006

6 EDWARD J. FUHR, ESQUIRE  
7 JOHNATHON E. SCHRONCE, ESQUIRE  
8 Hunton Andrews Kurth LLP  
9 951 East Byrd Street  
10 Riverfront Plaza - East Tower  
11 Richmond, VA 23219

12 For the Petitioners: DAVID L. AXELROD, ESQUIRE  
13 Ballard Spahr LLP  
14 1735 Market Street  
15 51st Floor  
16 Philadelphia, PA 19103-7599  
17  
18  
19  
20  
21  
22  
23  
24  
25

In re Altria Group, Inc. - 02/16/2023

1 (Court convened at 11:03 a.m.)

2 THE CLERK: Civil Action 3:20-CV-772, *In Re Altria*  
3 *Group, Inc. Derivative Litigation.*

4 Representing the plaintiff is Kip B. Shuman and Paul  
5 M. Falabella.

6 Representing the defendants are Stephen R. DiPrima,  
7 Jacob Miller, Edward Fuhr, and Jared M. Gerber.

8 Counsel, are we ready to proceed?

9 MR. SHUMAN: Yes.

10 MR. DiPRIMA: We are.

11 MR. MILLER: Yes, we are.

12 THE COURT: Before we get started, I just want to  
13 remind folks that elected to listen on our call-in number,  
14 before we get started, they are to put their phone on mute.  
15 They may not speak in any manner, and they may not record  
16 these proceedings in any fashion.

17 All right. We're here, hopefully, for the final  
18 hearing of the final approval.

19 So it looks like, Mr. Shuman, the issues were  
20 resolved and the edits were made that was -- at least complied  
21 with what I directed; is that right?

22 MR. SHUMAN: I can confirm that, Your Honor.

23 THE COURT: Are you aware of any objectors that  
24 remain?

25 MR. SHUMAN: There are no other objectors that

In re Altria Group, Inc. - 02/16/2023

1 remain, Your Honor.

2 THE COURT: Mr. Axelrod, you're out there somewhere,  
3 right?

4 MR. AXELROD: I am here, Your Honor.

5 THE COURT: Do you want to come on up here to the  
6 lectern?

7 MR. AXELROD: Yes.

8 THE COURT: Well, I gave you a starring role the last  
9 time here, and you succeeded on an objection. But you filed  
10 your pleading indicating that's been resolved; is that  
11 correct?

12 MR. AXELROD: That is correct, Your Honor.

13 THE COURT: So the objections are satisfied?

14 MR. AXELROD: The objection is satisfied.

15 THE COURT: Are you aware of any other objectors?

16 MR. AXELROD: I am not.

17 THE COURT: Is there any reason why I can't move  
18 forward with approval?

19 MR. AXELROD: Not from the standpoint of the  
20 shareholder objectors.

21 THE COURT: That's fine. You can have a seat.

22 MR. AXELROD: Thank you, Your Honor.

23 THE COURT: I'm just going to ask: Are there any  
24 other objectors present? Hearing none, we're going to move  
25 forward.

In re Altria Group, Inc. - 02/16/2023

1 Mr. DiPrima, did you want to say anything else about  
2 the edits?

3 MR. DiPRIMA: Nothing further, Your Honor.

4 THE COURT: I intend to move forward, then, and  
5 approve this, thankfully, for all of our well-beings, I think.

6 All right. So I'm going to grant the final approval  
7 of the settlement, finding it to be fair, reasonable, and  
8 adequate, as amended, based upon what the parties recently  
9 filed. I think it was Exhibit A made the changes.

10 Number one factor: Settlements of shareholder  
11 derivative actions are favored in the Fourth Circuit. The  
12 Fourth Circuit has made it clear in the *Zimmerman* case that  
13 settlements in such cases are particularly favored because  
14 shareholder derivative actions are notoriously difficult to  
15 litigate. On this point, the Court acknowledges a few of the  
16 key benefits of settlement in this case.

17 One, the dispute is resolved; two, both the parties  
18 and the Court conserve resources that otherwise would be used  
19 on further litigation; and perhaps, most importantly, three,  
20 Altria management can get back to running their company,  
21 including implementing the changes that the settlement  
22 requires.

23 (2) Fairness. This agreement was reached at arm's  
24 length negotiation with a process by competent representation.  
25 But I'm also going to add, of course, we're here for the third

In re Altria Group, Inc. - 02/16/2023

1 time, so I have rejected the first and the second efforts to  
2 have this resolved. I added, myself, different parameters to  
3 ensure that it was fair and adequate, including the  
4 requirement of an independent monitor, who I appointed, who  
5 has also filed a pleading saying he joins in recommending the  
6 approval of this settlement. So, clearly, there has been an  
7 arm length's negotiation.

8 I find there's no evidence of collusion, specifically  
9 because I implemented the independent monitor here. And I  
10 actually went the additional step that I normally do not do,  
11 which is I selected the independent monitor myself to avoid  
12 any concerns about collusion, because, frankly, in the  
13 beginning, I had concerns about that.

14 The advanced posture of this case also suggests that  
15 settlement was reached through a fair process, much of which  
16 I've already discussed. But it also included multiple  
17 settlement conferences in front of Judge Colombell, as well as  
18 other mediators, former judge Layn Phillips and Ms. Niki  
19 Mendoza, who I'm told are nationally-recognized mediators with  
20 specific experience in shareholder derivative actions.

21 There was extensive discovery conducted in this  
22 settlement -- in this case as well. Mr. Shuman and his  
23 colleagues have described that process in their papers.  
24 Again, the circumstances surrounding the settlement  
25 negotiations and experience of counsel on both sides suggest

In re Altria Group, Inc. - 02/16/2023

1 that the settlement process was procedurally fair. Lawyers on  
2 both sides also have ample experience in shareholder  
3 derivative litigation as well.

4 I also find the fact that the -- we had experienced  
5 counsel on behalf of the objectors weigh in, and they  
6 objected. We resolved it in a way that's satisfactory to the  
7 objectors, and I think also supports the fairness of the  
8 settlement agreement as amended.

9 (3) As to adequacy, this was the issue that I was  
10 concerned about the last time. I wanted to make sure that it  
11 was real money that was on the table, in addition to the  
12 measurables that we spoke of before. I find that the  
13 substantive benefits that the settlement confers in the  
14 company here are significant. Their payment of \$100 million  
15 of what I'm going to refer to as new money and not funneled to  
16 legacy programs I think benefits the corporation, particularly  
17 their reputation.

18 Also, the independent monitor, along with the  
19 measurables that he is going to enforce, I believe are going  
20 to have significant benefits to the company, thereby providing  
21 benefits to the shareholders.

22 Of course, there was significant risk at trial here  
23 that that needs to be weighed against. Again, Virginia law,  
24 like many states, is quite deferential to the decisions that  
25 corporate officers and directors. And the parties have

In re Altria Group, Inc. - 02/16/2023

1 accurately pointed out that Virginia, in fact, is one of the  
2 most deferential to the decisions of corporate officers and  
3 directors. So when you look at the settlement return versus  
4 the risk, I think it was significant.

5 That amount of money, \$100 million, shows, I believe,  
6 that Altria is putting their money where their mouth is,  
7 restoring some of their credibility that they lost through the  
8 bungling of the JUUL investment. And, again, I believe quite  
9 strongly in the value of the oversight that is presented by  
10 the independent monitor, Mr. Dry, who the Court knows to be an  
11 individual of high character, integrity, and ability.

12 It will provide him with the authority to meet the  
13 measurables. We're also saving \$7 million in reserve on top  
14 of what his budget of up to \$2 million per year to undertake  
15 his compliance efforts. But there's also \$7 million that will  
16 be held in reserve, that will be deployed, but only if  
17 necessary, if it finds that the company is not properly  
18 implementing the terms of the settlement in meeting their  
19 measurables.

20 In other words, I have built in this an incentive,  
21 \$7 million incentive for Altria to meet the demands of the  
22 agreement, which I think are considerable. And I'm hopeful  
23 that they'll meet it, and I hope that they keep the  
24 \$7 million. That's a pretty good incentive here.

25 And, lastly, as I required the last time in terms of



In re Altria Group, Inc. - 02/16/2023

1 the wording, Mr. Dry has final veto power over the selection  
2 of these independent, third-party programs who are going to  
3 receive the funding.

4 I want to note here too that I expect Altria, in  
5 consultation with Mr. Dry, to continue to develop more  
6 measurables. I find that the measurables now are sufficient  
7 and off to a good start. But I think it's in the company's  
8 interest and, therefore, in the shareholders' interest that it  
9 be an ongoing relationship, which is why I've given him broad  
10 authority, and also with the ability, as I believe both sides  
11 have agreed, that I will retain jurisdiction, if necessary,  
12 also for either party to come back as well as the monitor.

13 I think, Mr. DiPrima, you wrote in that Altria can  
14 come back as well, and I think that's good for all of you.  
15 But I have no intention of being the monitor myself. I don't  
16 think you want me running Altria. I know the company doesn't.  
17 And I have other things to do around here. But that's why I  
18 picked Mr. Dry. It's somebody who I have complete faith in.  
19 I know he's going to handle this properly. He has the  
20 judgment, integrity, and the character in order to carry this  
21 out in an appropriate way.

22 So with all that being said, I reiterate that I find  
23 the settlement to be fair, reasonable, and adequate, and it,  
24 therefore, warrants final approval, which I will do. I will  
25 dismiss the case with prejudice; however, I'm going to retain

In re Altria Group, Inc. - 02/16/2023

1 jurisdiction over this case for purposes of enforcement for  
2 the settlement, as the parties have agreed, consistent with  
3 *Kokkonen versus Guardian Life*, the Supreme Court opinion on  
4 this.

5 And, as noted, I empower not just Altria but also  
6 counsel, but also the independent monitor to return to me if  
7 there's any issues with implementation. So I'm going to  
8 approve that.

9 We're now going to turn to the request for attorneys'  
10 fees and service awards for the named plaintiffs.

11 I have no problems -- I will tell you, Mr. Shuman, if  
12 you want to come on up here, I'm going to handle this a little  
13 bit differently than what you approached me on. I'm going to  
14 approve the service awards for the named plaintiffs in the  
15 amount of -- you asked for 15,000 each, as I recall, so I'm  
16 going to approve that. I'm going to segregate the expenses  
17 and approve that. That amount was \$220,614.44.

18 As I understand, then, your fee that you're asking  
19 for off the lodestar, which goes unchallenged here, is  
20 \$11,664,544.50; is that right?

21 MR. SHUMAN: That's right.

22 THE COURT: And you're looking for a multiplier of  
23 1.5.

24 MR. SHUMAN: That's right, Your Honor.

25 THE COURT: That would result in a total of

In re Altria Group, Inc. - 02/16/2023

1 17.5 million. And I believe that you're indicating this would  
2 also encompass fees for cases that are pending in the Virginia  
3 Circuit Courts in Albemarle and Henrico Counties, and there  
4 would be no fee petitions submitted with those cases; is that  
5 right?

6 MR. SHUMAN: That's right, Your Honor.

7 THE COURT: I'm certainly fine with that.

8 Now, you say any dispute over fees goes to Judge  
9 Phillips. I'm going to change that. I'm going to preserve  
10 the ability to address any fee issues. So if there's a  
11 problem, you're going to come back to me.

12 The issue that I have is this: Look, I don't want to  
13 beat a dead horse because I know I've given you a hard time,  
14 and you're obviously a respected force in the plaintiffs'  
15 community, so I don't mean to be disrespectful. But,  
16 obviously, I haven't been happy with this. I'm happy with one  
17 sense, in the amount of money, but that first one I thought to  
18 be completely illusory. Look, you're clearly a really good  
19 lawyer. If I can see that -- you're an expert in this area --  
20 you should have seen that. And then we had to come back  
21 again. And I'm not looking to give you a multiplier of 1.5.

22 I will tell you, I initially was just going to give  
23 you the lodestar, but I think that there's some inherent risk  
24 in taking on these cases. I mean, look, if they didn't agree,  
25 I was ready to set it for trial. I said that in my order, I'm

In re Altria Group, Inc. - 02/16/2023

1 ready to try this case, right?

2 But I wanted to give you a chance to be heard on  
3 this. I'm thinking of a number in between the lodestar and  
4 1.5, but I want to give you, out of fairness, a chance to be  
5 heard.

6 MR. SHUMAN: Your Honor, I would ask for the 1.5  
7 multiplier and the \$17.5 million fee.

8 This case was about as hard a case as we have had.  
9 Going against big tobacco is very difficult. They have a  
10 reputation of not settling, of litigating hard, and of having  
11 very fine lawyers.

12 I just learned just this last week that in 2022 this  
13 case was deemed the fifth largest securities settlement in the  
14 country. We did that with all the defenses that defendants  
15 possessed. We did that without surviving even at the pleading  
16 standard. And their defenses, which I can tick off but  
17 they're in our papers, were substantial. So for us to do  
18 that --

19 THE COURT: I accept all this. I accept everything  
20 you just said so far.

21 MR. SHUMAN: So this case, in the fifth largest, is  
22 the second largest derivative settlement of 2022. It's a  
23 superb recovery. It's better now because of the Court's  
24 intervention; we don't deny that. But I want to address that.

25 In terms of us -- I just want to address it head-on,

In re Altria Group, Inc. - 02/16/2023

1 because I think that's what the Court appreciates.

2 THE COURT: Yeah. I'm a pretty direct guy. You've  
3 figured that out by now.

4 MR. SHUMAN: In terms of us not getting the  
5 independent monitor right away, that was never going to  
6 happen. The independent monitor in this case, that the Court  
7 instructed, is akin to a consent decree, a governmental  
8 consent decree, that requires a company to do or not do  
9 certain things over a period of time, with independent  
10 oversight over a five-year period.

11 At the stage of this litigation, and even if this  
12 case had been litigated longer, plaintiffs are negotiating a  
13 compromise. That's what we do. That's what litigators do.  
14 We do the best job we could do. There was no rollover. If  
15 there was a rollover, we would have been before you a year and  
16 a half ago. There wouldn't be \$117 million. It would be a  
17 corporate governance only settlement, which is very common in  
18 derivative cases.

19 But we pushed and we pushed. And the fact of the  
20 matter is, and this is the reality, when a court tells the  
21 parties that something needs to be done, that introduces a  
22 completely new dynamic. That's the reality. We don't have  
23 that ability to bring that kind of pressure. I wish we did,  
24 but we don't. That's how it happened here.

25 So with due respect, to the extent the Court wasn't

In re Altria Group, Inc. - 02/16/2023

1 happy with all aspects of the settlement, we understand that.  
2 The settlement is better today. As a representative for the  
3 plaintiffs, who is representing Altria and its shareholders,  
4 we're happy about that.

5 But no criticism, in my mind, could be leveled  
6 against us or our fee reduced because we could not get an  
7 independent monitor. It was not on the plate.

8 And I want to add just one more thing to that. I've  
9 been doing derivative litigation solely since 2006, since the  
10 backdating stock options scandals. I have never seen an  
11 independent monitor in any private litigation. It's never  
12 happened. We looked at defendants' papers; they said the same  
13 thing. It's a unicorn.

14 Now, my view is it could serve as a model for future  
15 derivative settlements. It would be an excellent model. It's  
16 another tool that we would have that we could potentially  
17 push. But in the first instance, it wasn't available to us  
18 without this Court's intervention.

19 Even with that, after the independent monitor was --  
20 you know, the guidance from the Court that we would need one,  
21 we pushed and we pushed to have the independent monitor with  
22 the strongest possible role that Mr. Dry could have. We  
23 wanted to empower him. We got him veto power. Although it's  
24 written in the agreement now, it was in the agreement already.

25 THE COURT: The language is made clear.

In re Altria Group, Inc. - 02/16/2023

1 MR. SHUMAN: The language is now explicit, correct.

2 And even then, we pushed defendants and we pushed  
3 them, and we pushed them until we couldn't push them any  
4 further. And then at that point, we went to Magistrate  
5 Colombell, twice. We briefed issues. We visited him. We had  
6 a Zoom. So even then we were pushing to get the best and  
7 strongest role for the independent monitor at the same time  
8 when the objectors came. We solved that problem. That was a  
9 multifaceted problem because of the group's involved:

10 plaintiffs, defendants, Mr. Dry, the objectors, the Court.

11 At every point in time, we have navigated every issue  
12 here. At the same time, Your Honor, we prepared for trial.  
13 This Court held true to itself. It said, "Settle or you're  
14 going to get a rocket docket date," and we knew that. We got  
15 a dump of 37 million pages of documents. I'm not going to go  
16 through, it's in our papers, what we did to go through those  
17 documents, organize them by team, subject matter, weekly phone  
18 calls. We were two-tracking this case for a couple years. We  
19 were preparing for trial and formal discovery and at the same  
20 time using that knowledge obtained in those documents for  
21 mediation. We had our feet to the fire here for two years.

22 We're proud of the settlement. We ended up with the  
23 second largest derivative settlement in 2022. Fees are often  
24 in the 20 to 30 percent. When you look at this case, we're  
25 asking for 15 percent. We're not seeking a windfall. There's

In re Altria Group, Inc. - 02/16/2023

1 risk to these cases. We're all relatively smaller firms. We  
2 take them on a contingency basis. We don't get paid any  
3 money.

4 THE COURT: Well, that's the reason why there should  
5 be a multiplier. I originally, frankly, thought about just  
6 giving you your lodestar amount, but I do believe there should  
7 be a multiplier.

8 MR. SHUMAN: The multiplier is modest; that's the  
9 fact of the matter. I wish it was higher.

10 THE COURT: Well, it might go lower here.

11 MR. SHUMAN: I understand that. I understand by  
12 speaking I run some risk.

13 THE COURT: No, you don't. Look, your points are  
14 well taken, but here's what I would say in response, right? I  
15 do think at the end of the day this is a good outcome. It is  
16 true that when I, you know, direct a party to look at  
17 somebody, there's a little bit more heft than when it's on  
18 from the other side. I understand that.

19 But you really do have leverage too, and that's this:  
20 Your leverage is trial, right? And, to me, you either believe  
21 in your case or you don't. If you don't believe in your case,  
22 you ought not to be filing the complaint, right? You're  
23 obviously an expert in this area and you're a seasoned trial  
24 lawyer, right? So before you file that complaint, you had to  
25 say to yourselves, along with your colleagues, that if they



In re Altria Group, Inc. - 02/16/2023

1 don't settle, we're going to try this case, right? And that's  
2 how successful plaintiffs lawyers operate.

3 That's certainly true with Mr. Falabella's firm,  
4 who's in this courthouse all the time. They know -- and  
5 that's how you get leverage over people, right? You say,  
6 "Listen, you don't want to meet us in the middle, we're going  
7 to try the case," right? So you do have leverage is what I'm  
8 telling you.

9 I greatly appreciate the risk. In fact, I just went  
10 over the issues, the deference, particularly under Virginia  
11 law, to corporate officers, and I'm in complete agreement on  
12 the risk.

13 What I'm concerned about is what I've said before --  
14 and, again, I want to stress, I mean no disrespect to you  
15 personally. That's not what this is about. In fact, it's the  
16 opposite. I have complete respect for you and your  
17 colleagues. When I saw that first settlement, I immediately  
18 knew that it was illusory. Now, if I'm smart enough to figure  
19 that out, you're double smarter than me, you're able to figure  
20 that out too.

21 And your local counsel's job -- and, Mr. Falabella,  
22 I'm going to criticize you here a little bit on this. You  
23 know our courthouse. You know not just me but every judge in  
24 this building. We don't just rubber stamp stuff. We do our  
25 job. And you should have been telling your folks that this is

In re Altria Group, Inc. - 02/16/2023

1 going to get real scrutiny. And no judge in this building is  
2 sign it to get rid of it because we have too much work to do.  
3 We do have too much work to do, but we all do our duty. And  
4 any scrutiny -- so this is never going to happen again is what  
5 I want to tell you, because the next time it will be a zero  
6 fee. Am I clear about that?

7 MR. FALABELLA: Yes, Your Honor.

8 THE COURT: So what I'm saying is, any scrutiny on  
9 that original proposal that you had to me, while the number is  
10 sexy in the beginning, the 117 million, in many ways, to me,  
11 it was zero. It was illusory because there was no mechanism  
12 to ensure that the contents of that agreement were carried  
13 out.

14 And so I came up with the independent monitor just  
15 because I was concerned about what was going on. And I  
16 understand that I have -- I have some different oomph to the  
17 equation. I get that, right? But I think you should have  
18 known that, to be honest with you, number one.

19 And then number two, when we came back the second  
20 time and this legacy program thing, it was readily apparent to  
21 me what they were trying to do. Again, if it's apparent to  
22 me, it should have been apparent to you.

23 So that is what my concerns are. And I'm saying that  
24 to you because I'm thinking not just about this case, but I'm  
25 thinking about the next case. I'm thinking the next time

In re Altria Group, Inc. - 02/16/2023

1 Mr. Falabella and his firm comes in front of me and when  
2 people seek multipliers, I give great scrutiny to this.

3 I do think you should get a multiplier. I'm not sure  
4 it's the number that you want. But that's what my concerns  
5 are. I'll give you one last chance to be heard on that.

6 MR. SHUMAN: Well, Your Honor, we were preparing for  
7 trial, but, you know, I would say that this case, like all  
8 cases, are not black-and-white, right? So there's either, you  
9 know, you settle, or you go to trial.

10 We looked at their defenses, whether it be appointing  
11 a special litigation committee, the business judgment rule,  
12 the exculpatory clause. And here's a big one: We didn't have  
13 a smoking gun. We didn't have a whistleblower in our case.  
14 And as trial lawyers, that makes it very difficult. We're  
15 proving our case through their documents and our experts.  
16 Whereas, in contrast, you know, they have a line of witnesses,  
17 friendly witnesses that were going to be very difficult.

18 So I agree with what the Court says, that you have to  
19 be ready for trial. We were in the process of that. That's  
20 where our lodestar lies, was doing that.

21 THE COURT: I have no challenge to your -- I'm  
22 accepting your lodestar. That's not the issue.

23 MR. SHUMAN: Yeah, but we have to be realistic, and  
24 we were realistic. And in some ways, we exceeded our  
25 expectations by getting a hundred-plus million dollar

In re Altria Group, Inc. - 02/16/2023

1 settlement.

2 THE COURT: I'll add one factor that weighs, I think,  
3 in your favor, is that the fee award does not come from your  
4 clients. It doesn't come from the plaintiffs. It comes from  
5 the corporation itself. So it doesn't -- it's not like every  
6 dollar I give to you detracts from a plaintiff who was  
7 injured, right?

8 MR. SHUMAN: Right.

9 THE COURT: I think that's a factor.

10 MR. SHUMAN: That was actually in my notes.

11 I would also say that the -- one way to look at the  
12 15 percent request and the multiplier 1.5 -- I'm still going  
13 to try to do what I can on that today, if you don't mind.

14 THE COURT: You should. I'm giving you your chance  
15 to be heard.

16 MR. SHUMAN: -- is that one way to look at it, the  
17 15 percent is just based on the \$117 million. It's 15 percent  
18 of 117, which is under --

19 THE COURT: Well, I think the real number is 100  
20 million, because that's what they're paying. And I allocated  
21 10 million -- up to 10 million for Mr. Dry. The 7 million --  
22 I'm hopeful that they behave. So I think the better number to  
23 work off in terms of percentages is 100 million.

24 MR. SHUMAN: Fine. So if you call it 100 million,  
25 which is still a rare settlement, derivative settlement over

In re Altria Group, Inc. - 02/16/2023

1 100 million, you're talking now 17.5.

2 THE COURT: And you lump, though -- I will say this:  
3 You lumped your expenses into your number, right?

4 MR. SHUMAN: Well, we do that out of just, you  
5 know --

6 THE COURT: I know that.

7 MR. SHUMAN: Yeah. Right.

8 THE COURT: What I'm saying to you is: I  
9 intentionally said before I get to the --

10 MR. SHUMAN: Yeah.

11 THE COURT: This is beneficial to you. I'm  
12 intentionally saying the named plaintiffs get their award,  
13 expenses come first, and then the fees. So, to me, it's three  
14 separate categories, which I think is beneficial to you at the  
15 end of the day.

16 MR. SHUMAN: Yeah.

17 THE COURT: Does that make sense to you?

18 MR. SHUMAN: Yes, it does.

19 So just to continue my thought. Call the settlement  
20 100, then, not 117; that's fine. I understand the reasoning  
21 there. So maybe the multiplier is not 1.5, maybe it's 1.6. I  
22 don't know, right? But the fact of the matter is that values  
23 the settlement at only the \$100 million.

24 But there is more here. Now, the Court maybe  
25 overwhelmed, underwhelmed, or in the middle about the other

In re Altria Group, Inc. - 02/16/2023

1 aspects of the settlement.

2 Now, there's the internal strength controls at the  
3 steering committee. Those clearly have been strengthened.  
4 There's board reporting for the first time to those -- from  
5 that steering committee about underage issues, particularly  
6 transactions of future proposed merges and acquisitions. Most  
7 importantly, when there's a proposed merger and acquisition of  
8 a nicotine/tobacco-related company, there are new due  
9 diligence requirements here.

10 Again, are they the greatest that have ever been, you  
11 know, created? This is a negotiation. They weren't there  
12 before; they are there today.

13 THE COURT: What made them meaningful was the  
14 measurables and the monitor.

15 MR. SHUMAN: No doubt.

16 THE COURT: I agree with everything you're saying.  
17 The problem is, is the initial agreement you negotiated, there  
18 was no substance to it without the measurables and the  
19 monitor.

20 MR. SHUMAN: This is substance that was behind that,  
21 and this is our thinking: Once Altria, the defendants,  
22 entered a settlement agreement like this, they have a  
23 fiduciary duty to follow the settlement agreement, to do the  
24 things that are required. Now, I can't tell you in two years  
25 whether they would have done it or not. I don't know. Give

In re Altria Group, Inc. - 02/16/2023

1 rise to another lawsuit? I don't know.

2 But the underlying police -- policing of this  
3 agreement is the board's fiduciary duties and Altria's duties  
4 to its shareholders that are encompassed in their agreement.  
5 That's the policing agent that we had. So it wasn't as if  
6 it -- I mean, I can't tell you whether they would have  
7 co-opted the process. I can't tell the future. But I can  
8 tell you that there was a policing agent here, and that's what  
9 it was.

10 So I just -- back to my point. I only want to just  
11 emphasize that given the \$100 million dollars settlement, that  
12 gives no value to the -- if we're asking for a percentage of  
13 that, this percentage of \$17.5 million, which I guess is  
14 17.5 percent instead of 15 percent --

15 THE COURT: So if you're at 15 percent, it would be  
16 15 million.

17 MR. SHUMAN: Yeah, but I still want --

18 THE COURT: You still want 17.5.

19 MR. SHUMAN: -- 17.5.

20 THE COURT: I would do the same thing that you're  
21 doing. I don't blame you.

22 MR. SHUMAN: I still want 17.5.

23 THE COURT: You have to make your pitch.

24 MR. SHUMAN: I've gotten some gray hairs from this  
25 case, so why not, right?

In re Altria Group, Inc. - 02/16/2023

1 THE COURT: So have I, I can assure you, and I'm not  
2 asking for 17 million.

3 MR. SHUMAN: Right. So my point just is that even  
4 looking at the 100 million, right, that gives us no value or  
5 credit for any of the reforms I've just talked about. And  
6 those reforms may not be the cat's meow, but they're real  
7 reforms. They took months to negotiate, and they're good  
8 reforms that will be implemented, whether they're new mergers  
9 and acquisitions or whether they're strengthening the usage  
10 steering committee, more board reporting. I believe, Your  
11 Honor, that as a result of this settlement and this governance  
12 package that the likelihood of a second Juul-type debacle has  
13 been materially reduced. So if you give zero value --

14 THE COURT: I agree with that, by the way.

15 MR. SHUMAN: Thank you.

16 THE COURT: And I think particularly because of the  
17 independent monitor.

18 MR. SHUMAN: Thank you.

19 And if you give zero value to that, zero, our  
20 request, just based on the 115 or the \$100 million, is still  
21 reasonable and still below both as a percentage and below as a  
22 multiplier than that often given, much less in the second  
23 largest case in 2022.

24 So I would ask this Court, given the work performed,  
25 given the lodestar, given the two-tracking of the case that we



In re Altria Group, Inc. - 02/16/2023

1 did, solving and helping solve all the problems that have  
2 occurred, that the modest multiplier, the modest percentage  
3 should be awarded.

4 Now, I understand the Court is going to reserve the  
5 distribution, potential allocation between the state and  
6 federal plaintiffs, if I understood that right.

7 THE COURT: No. No. No.

8 MR. SHUMAN: Okay.

9 THE COURT: What I'm saying is this: You have agreed  
10 that whatever fee I approve it encompasses the state.

11 MR. SHUMAN: That's right. So there's another -- the  
12 federal fee is going to get reduced more.

13 THE COURT: Okay. I think what I'm saying to you,  
14 what I was saying to you, what I'm reserving is if there's a  
15 dispute, it's going to come to me, not to Judge Phillips.

16 MR. SHUMAN: Got it.

17 THE COURT: Because, look, I'm not also happy with  
18 what that they did too, because I think -- look, I mean no  
19 disrespect to Judge Phillips. I've never met him before,  
20 right? I've had a lot of his cases where he's been the  
21 mediator in, it's not just this case, and I've heard that he's  
22 one of the best in the country. So, again, I haven't met the  
23 guy. But I'm kind of a hands-on guy -- you've probably  
24 figured that out by now --

25 MR. SHUMAN: Yes.

In re Altria Group, Inc. - 02/16/2023

1 THE COURT: -- and I want to achieve what I want to  
2 achieve here, and so if there's a problem on the fees, you  
3 come back to me.

4 But what you proposed, putting aside the multiplier,  
5 the aggregate encompasses the state. So I'm not going to give  
6 you the 1.5. I think I'm going to give you a little bit more  
7 than what I intended when I came out here. But whatever that  
8 number is, you divide that up with your colleagues as you  
9 originally were going to do, right? And if there's a dispute,  
10 you return to me instead of Judge Phillips.

11 MR. SHUMAN: You got it, Your Honor.

12 THE COURT: Does that make sense?

13 MR. SHUMAN: Yep. It's the procedure that is going  
14 to be different.

15 THE COURT: So I'm just going to modify it.

16 MR. SHUMAN: Right.

17 THE COURT: A dispute on fees comes to me. That's  
18 it.

19 MR. SHUMAN: Well, I've made my arguments about the  
20 17.5. You know, if we were seeking a windfall or a high  
21 multiplier, if we hadn't navigated, you know, through not only  
22 Altria's defenses but the minefields over the last -- since  
23 August -- you know, we've done a great job. I'm proud of the  
24 job we did. Altria's in a better place because of it, and its  
25 shareholders are in a better place for it.

In re Altria Group, Inc. - 02/16/2023

1 THE COURT: Well, it's clear -- look, these cases are  
2 hard. I've already said that. You've got great lawyers on  
3 the other side, an endless pool of money to defend over there.  
4 You were transferred away from San Francisco here to our  
5 beloved city of Richmond. I probably didn't make you feel too  
6 good. So I know you've had an uphill climb, but I still hope  
7 that you walk out of here feeling that you did a good job.

8 MR. SHUMAN: Thank you.

9 THE COURT: Is there anything else you want to say?

10 MR. SHUMAN: No, Your Honor.

11 THE COURT: Mr. DiPrima, did you have a need to say  
12 anything?

13 MR. DiPRIMA: No, Your Honor, we don't.

14 THE COURT: Mr. Axelrod, do the objectors have any  
15 comment on fees?

16 MR. AXELROD: No, Your Honor.

17 THE COURT: Does anybody present object on the fee  
18 request? None being heard.

19 All right. In cases where the relief obtained does  
20 not include the creation of a common fund, district courts in  
21 this circuit largely turn to the lodestar method in relying on  
22 the *Johnson* factors.

23 One: The time and labor expended. Here there's no  
24 question there was a substantial amount of time and labor. I  
25 should make it clear, I'm not challenging the lodestar

In re Altria Group, Inc. - 02/16/2023

1 calculation. That amount seems completely reasonable to me  
2 with the complexity of this case.

3 Two: The novelty and the difficulty of the questions  
4 raised. Again, I just said this is a complex case.

5 Three: The skill required to properly perform the  
6 legal services rendered. I've already spoken about the fact  
7 that plaintiffs' counsel here is quite experienced and experts  
8 in this area.

9 Four: The attorneys' opportunity costs in presenting  
10 the instant litigation. I am approving over \$200,000 in  
11 expenses, which also goes to the risk that is involved to  
12 plaintiffs' counsel here. They put over \$11 million of work  
13 into it, plus they had over \$200,000 in expenses, so there was  
14 significant risk involved.

15 Five: The customary fee for like work. The 1.5  
16 multiplier is within the realm of numbers. In fact, I think  
17 it was cited back to me that one of my cases I approved  
18 something higher. It always makes me nervous when lawyers  
19 cite work I've done in other cases. So the 1.5 is not out of  
20 the range. It's certainly within the range.

21 Six: The attorneys' expectations at the outset of  
22 the litigation. Mr. Shuman has talked about that a little  
23 bit.

24 Seven: The time limitations imposed by the client or  
25 circumstances. I don't really think that's a factor.

In re Altria Group, Inc. - 02/16/2023

1           Eight is the one that I'm hung up on, the amount in  
2 controversy and the results obtained. I don't want to beat a  
3 dead horse because the original amount of money here is  
4 significant, and the final result I think is extremely  
5 favorable. I can't say that strongly enough. But it required  
6 me to do a lot of work here, and that should not have  
7 happened. I think the first settlement that was submitted  
8 here was completely illusory, and that should have been known,  
9 and plaintiffs' counsel should have taken other measures on  
10 that. And then I had to adjust it the last time at the  
11 hearing, so I'm factoring that in.

12           Nine: The experience, reputation, and ability of the  
13 attorneys. It's really on both sides, because you also have  
14 to measure the amount of defense that was here, and certainly  
15 Mr. DiPrima and his crew are very able lawyers with deep  
16 pockets, so they could have litigated this to the hilt.

17           Ten: The undesirability of the case within the legal  
18 community in which the case arose. I would say the risk is  
19 what speaks to the undesirability. We've talked about that.

20           Eleven: The nature and the length of the  
21 professional relationship between attorney and the client.  
22 That's not really much of a factor here.

23           And twelve: The attorneys' fee awards in similar  
24 cases.

25           We've already talked about the result obtained. I

In re Altria Group, Inc. - 02/16/2023

1 think, at the end of the day, the final settlement here is  
2 quite significant. And I hope this is used as a monitor going  
3 forward. You can call that Novak model, if you want, when you  
4 advance that going forward. And I'm sure Mr. Dry wants to be  
5 part of the Novak model in other cases. I think he'll be  
6 readily available.

7 I look at awards in similar cases here. Derivative  
8 actions are quite difficult and there are other cases where  
9 the multiplier has actually been quite high.

10 Three: The objections. There was some; we resolved  
11 it. I had my own objections and we had to deal with it. But,  
12 really, if you look at the complexity of the case, the risk  
13 involved, the time and expense dedicated to this case and  
14 public policy concerns, certainly a multiplier is appropriate.  
15 I'm not going to agree with the 1.5 multiplier. But what I  
16 think I've decided to do -- again, let's step back.

17 I'm awarding \$15,000 for each named plaintiff; that's  
18 separate.

19 I'm awarding the expenses of \$220,614.44; that's  
20 separate.

21 I think what I've decided to do is use Mr. Shuman's  
22 words against him earlier when he talked about 15 percent.  
23 I'm going to use the 100,000 as the marker for that. I'm  
24 going to award \$15 million in attorneys' fee, which, by my  
25 calculation, is close to about 1.3 as the multiplier. And the

In re Altria Group, Inc. - 02/16/2023

1 reason is the problems that we've had before. I think that's  
2 a fair and reasonable number.

3 I know you're in disagreement with that, Mr. Shuman,  
4 but \$15 million is a pretty big number here at the end of the  
5 day.

6 Is there anything else that needs to be done?

7 MR. SHUMAN: Thank you, Your Honor.

8 THE COURT: We're going to enter to that effect here  
9 going forward.

10 MR. SHUMAN: Appreciate that.

11 THE COURT: Mr. DiPrima, anything else from you?

12 MR. DiPRIMA: Nothing further, Your Honor.

13 THE COURT: So I'm not going to have to deal with  
14 this case again, I hope, right?

15 Look, if Altria is smart, they'll use the independent  
16 monitor in the way that it should be used, which in many ways  
17 is almost like an insurance policy going forward, because he's  
18 so able. I have found on the record his character, integrity,  
19 and qualifications, so use the tool. Don't fight the tool is  
20 really what I'm saying, and then we'll kind of go from there.

21 Mr. Axelrod, thanks for coming down here.

22 Mr. Dry, thank you for agreeing to serve as the  
23 compliance monitor in this case.

24 MR. DRY: Thank you.

25 THE COURT: All right. We're all done.

In re Altria Group, Inc. - 02/16/2023

1 (Court recessed at 11:45 a.m.)

2 CERTIFICATE

3 I, Melissa H. Custis, certify that the foregoing is  
4 a correct transcript from the record of proceedings  
5 in the above-entitled matter.

6

7 /s/ Melissa H. Custis, RPR Date: 02/23/2023

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25